IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 9TH OCTOBER 2007 / 17TH ASWINA 1929

Bail Appl..No. 6121 of 2007()

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CP.16/2007 of J.M.F.C.,RANNI
C.R. NO. 22/2007 of RANNY EXCISE RANGE

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PETITIONER/ACCUSED NO.2

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SADANANDAN @ KUNJUMON, S/O.VELAYUDHAN,
KAVUNGAL HOUSE, ESHUMATTOM KARA,
EZHUMATTOOR VILLAGE, MALLAPALLY TALUK,
PATHANAMTHITTA DISTRICT.

BY ADV. SRI.ABRAHAM SAMSON
SMT.LOVELY SAMSON

RESPONDENTS: STATE

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THE STATE OF KERALA, REPRESENTED BY
THE EXCISE INSPECTOR, RANNY EXCISE RANGE -
THROUGH THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM, KOCHI-31.

BY ADV. SRI. JAI GEORGE, PUBLIC PROSECUTOR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 09/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**R.BASANT, J**

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**B.A.No. 6121 of 2007**

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Dated this the 9th day of October, 2007

**ORDER**

Application for anticipatory bail. The petitioner, the 2nd accused faces allegations under the Kerala Abkari Act. The 1st accused was allegedly found to be in possession of 500 ml of arrack supplied by the petitioner- 2nd accused. Investigation is in progress. The petitioner apprehends imminent arrest.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. He does not deserve to suffer the trauma of arrest and incarceration. Appropriate directions under Section 438 Cr.P.C may in these circumstances be issued, submits the learned counsel for the petitioner.

3. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that there are no circumstances in this case justifying the invocation of extraordinary equitable discretion under Section 438. I find merit in the opposition by the learned Public Prosecutor.

4. After the decision in **Bharat Chaudhary v. State of Bihar** [A.I.R 2003 S.C 4662], it is trite that powers under Section 438 Cr.P.C can be invoked in favour of a person who apprehends arrest in

execution of a non bailable warrant issued by a court in a pending proceedings. But even for that, sufficient and satisfactory reasons must be shown to exist. I am not persuaded in the facts and circumstances of this case to conclude that any such reasons exist.

5. This is a fit case where the petitioner must resort to the ordinary and normal course of appearing before the learned Magistrate having jurisdiction. He must then seek regular bail in the normal and ordinary course. I have no reason to assume that the learned Magistrate would not consider the application for regular bail on merits, in accordance with law and expeditiously. Every court must do the same.

In the result, this petition is dismissed. I may however, hasten to observe that if the petitioner appears before the learned Magistrate and applies for bail, after giving sufficient prior notice to the Prosecutor, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously.

**(R.BASANT, JUDGE)**

sj

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P.A.TO JUDGE